

THE COURTS DEAL A BLOW TO SEGREGATION

The "Separate But Equal" Doctrine Begins to Crumble

MILTON R. KONVITZ

AFTER almost fifty years, the famous Berea College decision, which closed the door on equal education for white and Negro, has been legally undone, and a chain reaction has thereby been put into motion which, many believe, promises the not-too-distant end of discrimination in higher education.

In 1904, it will be remembered, the legislature of Kentucky passed an act making it unlawful "for any person, corporation, or association of persons" to maintain an educational institution where both white and Negro pupils received instruction. A school or college was to be fined \$1,000 for each day of operation in violation of the statute. An educational institution could, however, operate a branch "in a different locality, not less than 25 miles distant," for the education exclusively of the pupils of "one race or color."

This law was couched in general terms, but actually it affected only one institution in Kentucky—Berea College. This small institution, founded in 1855 for the benefit of the people of the mountain regions of Kentucky, Tennessee, Virginia, North Carolina, and South Carolina, had opened its

doors to Negro students without discrimination in 1865. In 1904 Berea had 753 white and 174 Negro students. Its president and trustees protested against the statute. On October 8, 1904, a grand jury indicted the college for the violation of it. Berea was found guilty and fined \$1,000. It appealed; the Kentucky Court of Appeals affirmed the conviction. Appeal was then made to the United States Supreme Court.

The Supreme Court, in a 7-2 decision in 1908, affirmed the conviction and held the act constitutional insofar as it applied to corporations under the laws of Kentucky. The state—argued Mr. Justice Brewer for the majority—reserved the right to alter, amend, or repeal the charters of Kentucky corporations; Berea College was incorporated under Kentucky statutes; insofar as the college was concerned, the segregation act merely operated to amend its charter. There was nothing to get excited about, Brewer intimated. But Mr. Justice Harlan (who was joined in his dissent by Mr. Justice Day) felt otherwise—notwithstanding the fact that he had been born in Kentucky and served as attorney general there.

Harlan found that it was inconceivable that the legislature had anything in mind except to prohibit the teaching of the two races in the same institution, by whomsoever that institution was governed:

It was the teaching of pupils of the two races *together*, or in the same school, no matter by whom or under whose authority, which the Legislature sought to prevent. . . . Can it be said that the Legislature would have prohibited such teaching by corporations, and yet consciously permitted the teaching by private individuals or unincorporated associations? Are we to attribute such folly to legislators?

Harlan said that the Court should hold

WITH so many people voicing alarm for the state of American civil rights, it is easy to overlook the fact that the year just past, for all its political turmoil, or perhaps because of it, was marked by significant progress in some of the more difficult areas. Most striking, perhaps, of any of the recent steps forward is the series of Supreme Court decisions that have opened Southern universities and professional schools to Negro students. MILTON R. KONVITZ, professor of industrial and labor relations at Cornell University, here discusses the significance of the Supreme Court's new position on segregation. Mr. Konvitz is the author of *The Constitution and Civil Rights* (1947) and other works.

the act unconstitutional as an arbitrary invasion of the rights of liberty and property guaranteed by the Fourteenth Amendment. The capacity to teach, he said, is given by God for beneficent purposes; the right to teach is part of one's liberty with which, under the Fourteenth Amendment, no state may interfere. If pupils of any race, voluntarily or with their parents' consent, choose to sit together in the same school, no government can legally forbid their coming together for the purpose of receiving common instruction. He said:

If the Commonwealth of Kentucky can make it a crime to teach white and colored children together at the same time, in a private institution of learning, it is difficult to perceive why it may not forbid the assembling of white and colored in the same Sabbath school, for the purpose of being instructed in the Word of God. . . . So, if the state court be right, white and colored children may even be forbidden to sit together in a house of worship or at a communion table in the same Christian church. . . . In the eye of the law, the right to enjoy one's religious belief, unmolested by any human power, is no more sacred nor more fully or distinctly recognized than is the right to impart and receive instruction not harmful to the public. . . . Again, if the views of the highest court of Kentucky be sound, that commonwealth may, without infringing the Constitution of the United States, forbid the association in the same private school of pupils of the Anglo-Saxon and Latin races, respectively, or pupils of the Christian and Jewish faiths, respectively. Have we become so inoculated with prejudice of race that an American government, professedly based on the principles of freedom, and charged with the protection of all citizens alike, can make distinctions between such citizens in the matter of their voluntary meeting for innocent purposes, simply because of their respective races?

WHILE the case was pending, Berea College thought it safer to abide by the statute, so it dismissed its Negro students, paid their transportation expenses to Negro colleges, and tried to aid them in various other ways.

The white students addressed the follow-

ing statement to their former Negro fellow students:

Friends and Fellow Students: As we meet for the first time under new conditions to enjoy the great privileges of Berea College, we think at once of you who are now deprived of these privileges. Our sense of justice shows us that others have the same rights as ourselves, and the teaching of Christ leads us to "remember them that are in bonds as bound with them."

We realize that you are excluded from the classrooms of Berea College, which we so highly prize, by no fault of your own, and that this hardship is a part of a long line of deprivations under which you live. Because you were born in a race long oppressed and largely untaught and undeveloped, heartless people feel more free to do you wrong, and thoughtless people meet your attempts at self-improvement with indifference or scorn. Even good people sometimes fear to recognize your worth, or take your part in a neighborly way because of the violences and prejudices around us.

We are glad that we have known you, or known about you, and that we know you are rising above all discouragements, and showing a capacity and a character that give promise for your people. . . . And you will always have our friendship, and the friendship of the best people throughout the world. We hope never to be afraid or ashamed to show our approval of any colored person who has the character and worth of most of the colored students of Berea. We are glad that the college is providing funds to assist you in continuing your education, and we are sure the institution will find ways in which to do its full duty by the colored race.

It was not until last year that the state of Kentucky made amends by official deed for the act of 1904. On March 9, 1950, its legislature passed another act exempting from the compulsory segregation law any institution of higher learning, public or private, at the undergraduate, graduate, or professional level, if the governing authorities of the institution so elected, and if "an equal, complete and accredited course is not available at the Kentucky State College for Negroes." The latter proviso has been construed to be meaningless. On April 14,

1950, the trustees of Berea College adopted a resolution empowering the administration to admit qualified Negro students from within the mountain region. Several Negroes have already been admitted, and now Berea College can again function under its original charter, which states: "God hath made of one blood all nations that dwell upon the face of the earth."

The Turning of the Tide

THE immediate impulse to this step by the Kentucky legislature was a decision by Judge Ford of the federal district court, who, on March 31, 1949, held that the University of Kentucky must admit Negro students to its graduate school until such time as the state provided equal facilities for Negro students. In June 1949 the University of Kentucky complied. Now the University of Louisville has also opened its doors to Negro students, and it is anticipated that by next September the Louisville Municipal College for Negroes will have shut down, with its 374 students transferred to the university.

Judge Ford's order has broken the back of segregation in higher education in Kentucky. A New York *Times* survey reports that "Kentucky has done the most to accept the letter and spirit of previous Supreme Court rulings."

The "previous Supreme Court rulings," it should be noted, did not include the decisions of June 5, 1950, in the *Sweatt* and *McLaurin* cases: Kentucky acted before these were handed down. The two Supreme Court rulings that laid the basis for Judge Ford's decision were: (a) In 1939, in *Gaines v. Canada*, the Supreme Court held that a state may not send a Negro to another state for schooling that a white student can get within the state and at state expense; (b) In 1948, in the *Sipuel* case, the Court held, in effect, that the University of Oklahoma Law School must admit a qualified Negro applicant as long as the state failed to provide equal though separate facilities. Both these cases involved professional education, and the case Judge Ford decided involved

graduate study; but the action of the Kentucky legislature is broad enough to apply to undergraduate as well as to professional and graduate studies. In this respect the state manifested a rare spirit of fairness.

A similar spirit has been manifested in Arkansas, and without the pressure of a specific court decision within the state. No sooner had the Supreme Court decided the first University of Oklahoma case in 1948 than the University of Arkansas admitted the first Negro to its law school—and shortly thereafter a second one. At first they were segregated within the university, but segregation was ended even before the decisions of June 5, 1950. The university also admitted a Negro girl to its medical college—without segregation.

In commenting recently upon these events, Roy Wilkins, of the NAACP, said: "Indeed, it is a curious and gratifying fact (like so many developments in the unpredictable area of race relations) that the state of Arkansas, whose record is less liberal, tolerant, and progressive than states like Kentucky, Virginia, North Carolina, and Missouri, should have been the very first of the Southern states to accept the new trend without fighting a delaying action or attempting to impose restrictions designed to limit, if not nullify, bare compliance."

However, the very first of all Southern and border states to admit Negro students to graduate classes had been West Virginia. After the *Gaines* decision in 1937, its state university began to do so. The University of West Virginia "did this quietly," Mr. Wilkins has pointed out, without any publicity, for a number of years. "The other states have just now caught up to the mountaineers."

The signal for the start of the catching-up process was two decisions by the Supreme Court last June.

The June Decisions

IN THE *McLaurin* case, a Negro with an MA degree applied for admission to the University of Oklahoma in order to study for his PhD in education. At first he was

denied admission, solely because the Oklahoma statutes prohibited the maintenance of any school attended by both races. Mr. McLaurin filed a suit to compel the university authorities to admit him. The federal district court, made up of three judges, ruled in his favor. Then the Oklahoma legislature passed an act admitting Negroes to institutions of higher learning attended by white students but requiring that they be segregated. McLaurin, having been admitted to the university, was forced to sit apart in each class, at a desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, but not to use the desks in the regular reading room; and to sit at a designated table and eat at a different time from the other students in the school cafeteria. McLaurin went back to the federal district court with the contention that such treatment violated his constitutional rights. The court denied his motion. He appealed to the Supreme Court. Meantime the university changed its procedure: McLaurin was allowed to sit in the classroom itself but only in a row set aside for Negro students; he was allowed to use a designated table on the main floor of the library; and he was allowed to eat in the cafeteria at the same time as other students but, again, at a special table; and he could wait in line with other students.

In the *Sweatt* case, a Negro applied for admission to the University of Texas Law School. In compliance with Texas law, he was rejected. He filed suit in a state court. The court held that he had to be admitted unless the state provided equal facilities for his legal education within six months. At the end of the following six months the university announced that a law school for Negroes would be ready in about three months. The state court therefore denied Mr. Sweatt relief. He appealed and the Texas Court of Civil Appeals remanded the case for further hearing. Following the new hearing, the trial and appellate courts held that Texas was providing equal though separate facilities. It appeared that at first the state had attempted to establish a Negro

law school at the University of Texas. Teaching was to be done on a part-time basis by four members of the University of Texas Law School faculty; 10,000 volumes had been ordered for the library, but there was no full-time librarian; nor was the school accredited. Then the state changed its plans and tried to establish a law school at the Texas State University for Negroes. The new school was given five full-time professors and a library of 16,500 volumes, with a full-time staff; it registered 23 students, and was on the road to accreditation. This did not prevent Sweatt's case from reaching the Supreme Court.

Were the facilities offered Messrs. McLaurin and Sweatt equal to those afforded white students? The Supreme Court held that equality had been denied them by their respective states. The Court said that the facilities offered McLaurin set him apart from other students. "The result," said Chief Justice Vinson for a unanimous Court, "is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." In effect, by reversing the decision of the federal district court, the Supreme Court outlawed the segregation of Negro graduate and professional students at state universities.

The Court held that Sweatt, too, had been denied equal treatment. Chief Justice Vinson said for a unanimous Court that anyone who had a free choice between the University of Texas Law School and the Law School of the Texas State University for Negroes would without hesitation choose the former. It was not a question of tangible factors that could be quantitatively compared—so many professors, so many books, so many students, etc. It was the intangibles that made for quality in a law school—e.g. "reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige." Here too, by reversing the decision of the Texas

courts, the Supreme Court in effect outlawed separate schools for Negro graduate and professional students.

A NOTABLE event in the proceedings in these cases was the submission of a brief by Philip B. Perlman, Solicitor General of the United States, in which the United States government asked the Supreme Court to review the precedents and set aside the "separate but equal" doctrine. Mr. Perlman's brief attacked racial segregation as "itself a manifestation of inequality and discrimination." The "separate but equal" theory, it argued, "is wrong as a matter of law, history, and policy." The Court was asked to repudiate the doctrine "as an unwarranted deviation from the principle of equality under law. . . ." Mr. Perlman stated:

Under the Constitution every agency of government, Federal and State, must treat our people as *Americans*, and not as members of particular groups divided according to race, color, religion, or national ancestry. All citizens stand equal and alike in relation to their government, and no distinctions can be made among them because of race or color or other irrelevant factors. The color of a man's skin has no constitutional significance. If the Constitution is construed to permit the enforced segregation of Negroes, there would be no constitutional barrier against singling out other groups in the community and subjecting them to the same kind of discrimination.

Separate but equal is sometimes described as an "ancient" doctrine of constitutional law. But it is derived not from the Constitution but from a judicial expression which did not make its appearance in the reports of this Court until 1896, and which is irreconcilable with the body of precedents which preceded and followed it. . . .

The subordinate position of Negroes in this country has been described as the greatest unsolved task for American democracy. The racial discriminations typified by these cases represent a challenge to the sincerity of our profession of the democratic faith. . . .

It is in the context of a world in which freedom and equality must become living realities, if the democratic way of life is to survive, that the issues in these cases should be viewed. In

these times, when even the foundations of our free institutions are not altogether secure, it is especially important that it again be unequivocally affirmed that the Constitution of the United States, like the Declaration of Independence and the other state papers in American history, places no limitation, express or implied, on the principle of the equality of all men before the law. The proposition that all men are created equal is not mere rhetoric. It summarizes a rule of law embodied in the Constitution, the supreme law of the land, and thus is binding on the Federal and State governments and all their officials. . . .

Why did the Court refuse to reconsider the "separate but equal" doctrine and put an end to its ignoble life? Perhaps it feared that such a step would have been considered too radical by millions of citizens not yet ready for the end of Jim Crow in education, and that it would have invited open and widespread defiance—"nullification." The Court perhaps hesitates to make too much haste.

But haste has been made by Southern graduate and professional schools in complying with the *McLaurin* and *Sweatt* decisions of the Supreme Court.

THE Southern Conference Educational Fund has reported that for the academic year beginning in the fall of 1950, approximately 200 Negroes were enrolled in 21 Southern colleges and universities that had formerly been all-white. Of the 17 states with segregation laws, 11 have lowered the racial bar in professional and graduate schools. Thus the University of Oklahoma enrolled 60 Negroes; the University of Texas, 21; the University of Arkansas, 12; the University of Kentucky, 15; the University of Missouri, 9; the University of Virginia, 3. The University of Louisville admitted 18 Negroes. Benjamin Fine of the *New York Times* reported last October that 1,000 or more Negroes were attending classes with white students in the 17 Jim Crow states. His information showed that 200 Negro students were engaged in graduate and professional studies at the University of Arkansas; the University of Kansas City had 54.

But not every state submitted to the decisions of the Supreme Court without opposition. In many instances Negroes had to get specific court orders. Thus Louisiana State University admitted a Negro student for the first time in its ninety-year history only after a three-judge federal district court signed an order on October 7 requiring the university to admit him and any other qualified Negro applicant; the University of Virginia received a similar court order on September 5. In Tennessee the Attorney General ruled that the University of Tennessee must admit qualified Negroes for graduate and professional studies; but on December 4 the trustees of the university voted to reject the applications of five Negroes. Four of the applicants have indicated they will fight the ban in the courts. The situation in Georgia is also unsettled; Governor Talmadge has declared that the United States does not have enough troops or police to enforce a court order requiring Negroes and whites to sit in the same classes in his state.

In North Carolina a federal district court held on October 9 that the law school for Negroes at North Carolina College, established by the state in 1939, was equal to the University of North Carolina Law School. The Negro school, with an enrollment last year of 28, is accredited; the court found that its teaching methods and facilities were patterned on those at the university; he said it enjoyed a "well-qualified" faculty. He found that the Negro college had a library of 30,000 volumes, while the university law school had 64,000; but of the latter two-thirds were in crates and not available for use; the library staffs were at least equal in quality.

About two years ago a similar ruling was made by Judge Waring on the Negro law school in South Carolina, though at the same time he termed the Negro law school "a fantastic extravagance." In neither case did the federal district court consider the intangibles that had apparently impressed the Supreme Court in the Texas case last June.

Regional Education Plans

WHAT effect do the Supreme Court decisions have on the legality of the regional plan for graduate and professional studies to which 13 Southern states have thus far subscribed, and which embraces 16 colleges and universities? Ostensibly it was not the purpose of the plan—officially called Southern Regional Education—to strengthen segregation, nor, admittedly, was it created to do away with segregation. The plan, which has been in operation for two years, was devised to meet situations in which it appeared that a state had failed to provide specific training for *anyone*, regardless of race or color. For instance, since Maryland has no veterinary school it could, under the regional plan, send qualified students to veterinary schools in other states. Whether or not they would be segregated in those schools, admitted or rejected because of race or color, would depend on the rules of admission of that particular school. (Participating states pay \$1,500 per student per year for medical and dental training and \$1,000 per year for veterinary medical training.) John E. Ivey, Jr., director of the Board of Control for Southern Regional Education, recently said:

There is no instance in which the program's operation has served to extend or alter segregation. In the first year's operation places for 388 students were provided under regional contracts; of these, 181 were for Negro students, and 207 were for whites. This fall's enrollment shows 545 places, 377 for white and 168 for Negro students. Thus the figures show the program is not operating exclusively or even primarily for the education of Negroes.

Any such program dealing with states and institutions must serve in accordance with the rules and regulations of those states and institutions. The Board of Control, as an agency serving a broad area, serves some states with segregation laws and some which admit qualified students to professional and graduate schools regardless of race. As an operating agency, it could function on no other basis. It does not, and could not, have a policy for or against segregation. It could no more tell an

institution or a state how it should admit students than it could dictate where its institutions should be located or what salary it should pay its faculty.

Just as the South's regional program admittedly is without power to alter the segregation policies of state and institutions, so it is not an instrument for extending those policies.

However, Maryland, a participant in the regional plan, recently tried to put it in effect under circumstances that met with judicial disapproval. The University of Maryland has a nursing school to which Esther McCready, a Negro girl, applied for admission. She was directed, instead, to the Meharry Medical School, School of Nursing, in Tennessee, under the regional compact. She refused to go there and the Maryland Court of Appeals supported her stand and held that the University of Maryland must admit her. Under the *Gaines* decision, the court held that since white girls were not sent out of the state for training in nursing, a Negro girl had to be treated the same way—despite the court's finding that "in educational facilities and living conditions the nursing school at Meharry College is not only equal but superior to the University of Maryland nursing school." The Supreme Court of the United States refused, on October 9, to review the decision.

In fairness to the regional plan, it should be pointed out that Southern Regional Education's Board of Control opposed the position of the University of Maryland, and told the Maryland court that the plan was not devised to meet the situation presented in the McCready petition, it being obvious that Maryland had failed to live up to its legal responsibilities to the petitioner.

Regional programs for graduate and professional studies are being expanded. Eleven Western states have been slowly but surely evolving such a plan. Three states—Colorado, New Mexico, and Wyoming—have already reached an agreement on medical education. Last November the governors of the eleven Western states approved the organization of an "interstate mission on higher education in the West." The plan

will probably materialize this year when the state legislatures ratify the action of their governors.

It seems likely that the regional plans will affect the pattern of race relations in graduate and professional studies, but precisely how is anyone's guess. The situation bears watching and study.

WHAT reception have the Negro students been accorded by white students? All reports indicate that their presence was taken calmly or with indifference. In some instances there was open endorsement of the new policy. The editors of four campus newspapers have expressed their approval of the new order—at the University of Alabama, University of Mississippi, Auburn, and Millsaps College. At Mississippi the editor, Albion J. Krebs, was particularly outspoken. He wrote: "The pigment of a man's skin must have nothing to do with the measurement of his ability. . . . Whether Southerners like it or not, that's how things will be." John Rankin, Congressman from Mississippi, called it a Communist editorial, whereupon Krebs said, "I'd like to know how I can be a Communist and a Roman Catholic, too." (The Krebs family first settled in Mississippi in 1718, and both of Krebs's grandfathers were Confederate soldiers.)

The president of the University of Kansas City has said: "Not only has no problem yet arisen on the campus, but the students and faculty are proud of themselves, of their trustees, and of their university for being the first in the state of Missouri to accept Negroes without special reservation." The Superintendent for Public Instruction in Kentucky has reported that there was no organized opposition to the elimination of the segregation policy and that the unorganized opposition was rapidly declining. (In Kentucky, Paducah Junior College, municipally owned, agreed to admit Negroes only after a federal district court signed an order last November.) Discordant voices have, however, been heard, mainly in South Carolina and Georgia, from

Dixiecrats like James F. Byrnes and Herman Talmadge. But the attitude of the young white people of the South, Walter White has said, "refutes the claims of the demagogues of that region that the abolition of segregation would mean violence and bloodshed."

The Undergraduate Schools

WILL the rulings of the Supreme Court be applied to undergraduate studies? As we have seen, Kentucky has voluntarily made a generous interpretation of its constitutional obligation, but it is doubtful whether other states will follow its example. Each of the Southern and border states has a college for Negroes. As far as comparative tangible qualities are concerned, these institutions will undoubtedly need improvement in order to pass the equality test. Will they be subjected to the test of intangibles, as in the cases involving graduate or professional studies? Certainly efforts will be made to do both: to compel the states to offer Negroes equal treatment insofar as tangible facilities are concerned, and to get the courts to extend the test of intangibles to undergraduate schools. A beginning has already been made in Delaware.

The University of Delaware is for white students only. Delaware State College is for Negro undergraduates. Last summer some Negro students applied to the university for admission as undergraduates. They were refused, and filed a suit in the Court of Chancery. Vice Chancellor Seitz decided in favor of the applicants on August 9. Accompanied by counsel, he had visited both campuses and found that the physical facilities at the college are vastly inferior to those at the university and that the inferiority was disproportionate to the difference in size of the student bodies. The Vice Chancellor had also found that the educational opportunities at the college were far fewer than at the university: at the university a student had a choice of eighteen fields of concentration; at the college, only eight. Furthermore, some of the eight fields listed in the college bulletin were not actu-

ally offered. The university offers "many, many courses" not available at the college; the difference is not only in number but in depth and intensity too—there are, for example, no seminars at the college, though there are many at the university. A comparison of the faculties also revealed a glaring inequality. At the college, faculty members are employed on a year-to-year basis, while the university provides tenure; at the university there are forty-eight full professors, at the college only four; on the university faculty scholarship, research, and publications are encouraged, but not at the college. The college's salary scale was so low, said the Vice Chancellor, that it "could not compete successfully with the local public school system"; the top salary for a full professor at the Negro institution was, in the summer of 1950, \$4,300. The university library has 140,000 volumes, the college library 16,000; "It would be a waste of time," said the Vice Chancellor, "to amplify the overwhelming inferiority of the library at the college to the library at the university." The university is accredited, the college is not. The Vice Chancellor also compared the administrative staffs, the health and medical facilities, the maintenance staffs, the athletic facilities, scholarship and prize funds of the two schools: in all respects he found the college inferior.

The Delaware case may well become a model, for its findings could easily be duplicated in most of the other Southern and border states. The NAACP and individual Negroes will continue to insist on equality, and this may do away with segregation in undergraduate studies as it already has in graduate and professional studies. In most instances the courts will not need to apply the test of intangibles—as in the Delaware case, where the disparity in tangibles alone was sufficient proof of unequal treatment. Conservatively estimated, it would cost the Southern and border states no less than a billion dollars to equalize educational facilities for the Negro from kindergarten through college. A large part of this would be spent on colleges. "Segregation has a price

tag," a Southern spokesman has said. "The South probably will buy all it can. But in the highest fields of education it just can't be bought." What has happened since June 5 shows that the Southern states no longer think of buying Jim Crow in graduate and professional studies. They may find that even in undergraduate schools the price of segregation is more than they can afford or care to spend. Nevertheless, the record, even since June 5, shows that these states will not decide to do anything until compelled to by court order.

RECENTLY the *Columbia Record* (South Carolina) said editorially: "The attempt to move faster in the law than the folkways of either race permit is foolish and it could be disastrous, undoing the gains already made and arousing forgotten passions." The editor overlooked a number of significant facts:

(1) Jim Crow or segregation is compulsory, and imposed by law. The Southern states do not rely on folkways—they coerce their folk to follow the ways of those who believe and preach and profit from "white supremacy." If segregation can be made by law, why cannot the law be unmade by another law? Where was the folkways argument when, at the turn of the century, the Southerners adopted their Jim Crow laws? They did not then, apparently, think of leaving race relations to be decided by voluntary folkways. Only now, with the established law on their side, do they speak of folkways.

(2) What has happened during the past half year shows that the younger Southerners are considerably less prejudiced than their parents. Maybe this is a reason why the parents are so anxious about the status quo—while the young folk, who, after all, are the ones who live on the campuses, are calm or indifferent. In any case, radical change has taken place at the Southern universities, and the skies have not fallen.

(3) Perhaps the editor of the *Record* has forgotten his own passions, but the Negro has not forgotten his, and cannot be expected to forget them indefinitely. Nor have millions of men and women, of all races, throughout the world, forgotten their passion—for fraternity, equality, and liberty; their passionate belief, as Robert M. Hutchins has said recently, "that freedom is the chief glory of mankind and that to repress it is in effect to repress the human spirit."

Many men and women in the South today have no wish to repress the human spirit. Only several months ago, at the annual meeting of the Southern Regional Council, an interracial organization of church, professional, and business men of thirteen Southern states, Paul D. Williams, president of the Council, said: "We are facing a crisis today because of our failure to admit Negroes to partnership in our public life." The Council recommended that Negroes be named to membership in all policy-making bodies that administer laws and govern public services, especially school boards both elective and appointive. The best way to achieve equality, said the Council, is for the Negro to "have a voice in the policy-making which determines the quality of education children are to receive"—not "arithmetical equality," not "paternalism," but "true equality." The Southern states, the Council said, "are discovering that the time is rapidly running out when postponement and token approaches to equalization will suffice." The Negro is fully aware "of the long record of evasion and inaction." Prodded by the courts, the South, as the Council sees it, now faces an opportunity: "The opportunity is before us to strengthen our region and hasten its progress by admitting all our peoples to the ranks of our common citizenship. There could be no more appropriate time than now, and no more appropriate field than education, for that step to be taken."